

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO: 1618 of 2005

Between:

Yemuna Indane, rep., by its Proprietrix Smt.K.Kavitha, w/o K.Srinivasa Rao, r/o Door
No.9-71, Murakondavari bazar, Inkollu, Prakasam District.

.... PETITIONER

AND

1 The Union of India, rep., by its Secretary to the Govt.,

Department of Petroleum and Natural Gas, Central

Secretariat, New Delhi.

2 M/s.Hindustan Petroleum Corporation rep., by the Director

(Marketing), 8, Surjee Vallab Marg, Mumbai-400 038.

3 M/s.Indian Oil Corporation, rep., by the Director (Marketing),

Head Office, 9, Ali Yawar Jung Marg,

Bandra, Mumbai. (WP is dismissed as against R-3 as

given up)

4 The Joint Collector, Guntur District at Guntur.

5 The Executive Sales Officer, M/s.H.P.C.Ltd., Guntur.

6 Sitaram Gas and General Traders, H.P.Gas Distributor, rep.,

by Sathuluri Siva Shankara Rao, S/o Venkateswarlu, R/o Gandhi Bomma
Centre, Pedanandipadu, Guntur District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the
circumstances stated in the Affidavit filed herein the High Court will be pleased to

Counsel for the Petitioner: MR.K.ANANDA RAO

Counsel for Respondent Nos.2&5: Mr.P.V.Sanjay Kumar

Counsel for Respondent No.6: P.V.A.Padmanabhan

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ORDER:

This writ petition is filed seeking a writ of *Mandamus* declaring the action of the 6th respondent in supplying/distributing the H.P (L.P.G) cylinders to the customers within the radius of 15 Kms. of Inkollu and the action of the respondents 2 and 5 in not taking any steps against the 6th respondent in directing him to transfer the L.P.G customers to the petitioner as illegal, arbitrary and contrary to the guidelines issued by the Government of India.

2. The brief facts that are necessary for disposal of the present writ petition may be stated as follows:

The petitioner was appointed as L.P.G Distributor at Inkollu of Prakasam District. A letter of intent dated 12.4.2004 was given by the third respondent. After obtaining necessary permission from the concerned competent authorities, the third respondent issued letter of appointment of L.P.G Distributorship on 27.10.2004. Accordingly, the petitioner has been distributing the L.P.G cylinders of Indane Gas to the customers within 15 kilometers radius of Inkollu of Prakasam District. While so, it is noticed that the 6th respondent who is the distributor of H.P. Cylinders of Pedanandipadu is also supplying the same to the customers within the radius of 15 K.Ms of Inkollu area. As per the guidelines of the Government of India when a new distributor was appointed in a particular area, no other distributor is authorized to supply any L.P.G cylinders in that area other than the distributor authorized by the company. But the 6th respondent is unauthorizedly distributing L.P.G in Inkollu area. When the said fact was brought to the notice of the 3rd respondent, Senior Area Manager, Indian Oil Corporation Ltd, he addressed a letter dated 5.1.2005 to the Senior Regional Manager, H.P.C to stop supply of L.P.G Gas in the trading area of Inkollu distributor and to transfer the L.P.G customers to the petitioner. But there was no response. Hence the present writ petition.

3 . The second and fifth respondent filed a counter affidavit stating that the 6th

respondent is the LPG Distributor of Hindustan Petroleum Corporation Limited ("H.P.C.L") at Pedanandipadu and Pedanandipadu and Inkollu are separated by a distance of 27 kilometers. The 6th respondent was permitted to operate an extension counter at Inkollu prior to the commission of the petitioner's LPG Distributorship at Inkollu. After commission of the regular Distributorship, the new Distributor is entitled to enroll the customers in his trading area by transferring the customers from the existing extension counters. It is for the petitioner to obtain necessary transfer vouchers from the 6th respondent in this regard. The Hindustan Petroleum Corporation Limited never denied such transfers and as a matter of fact, H.P.C.L addressed a letter to the 2nd respondent making it clear that the petitioner was at liberty to take individual transfer of general customers and Deepam customers after due intimation to the District authorities. However, connections given under H.P.Gas Rasoi Ghar Scheme to schools under the Mid-day Meal Scheme are not subject to such transfer as the deposit in respect of the same is borne by the Hindustan Petroleum Corporation Limited and not by the customers. As such, supplies to H.P Gas Rasoi Ghar scheme customers would continue to be under the purview of the 6th respondent. In respect of other customers, it is for the petitioner to obtain individual transfers from the 6th respondent. Therefore, the writ petition is devoid of merits and the same is liable to be dismissed.

4. The 6th respondent filed a detailed counter affidavit stating that the Distributorship of the petitioner and his distributorship are governed by independent licence agreements entered into within their respective oil companies and various other policy guidelines issued by the first respondent from time to time. There is no privity of contract between himself and the writ petitioner or his principal M/s Indian Oil Corporation. The petitioner has no such monopoly or vested right over Inkollu or its surrounding villages. In fact, there are three other distributors of 3rd respondent who are also operating the same area. The second respondent appointed the 6th respondent as its dealer long back and the process of appointing new distributors is always a continuous one depending on the exigencies and as per the directives of the Government of India. It is always open for the Oil Corporation to permit or appoint more than one distributor in a particular area and no distributor including the writ petitioner has an exclusive right over any area in exclusion of other distributors

either from the same oil company or from other oil companies and the areas of operation are never defined or determined by the oil companies. Till liberalization of L.P.G market, first respondent used to regulate the market on the basis of ceiling limits, fixed in terms of number of refill sale per month and no areas of operation are ever prescribed or imposed. The ceiling limits prescribed by the Government of India earlier are as under:

Sl.No. Town/Population Refil Sales Ceiling Limits

(Based on 1991 Census) per month

1. Bombay 15,000

 2. Delhi 15,000

 3. Chennai/Calcutta & Towns 15,000
with Population of 40 Lacs
and above i.e., Bangalore,
Hyderabad/Secunderabad.

 4. Towns with 20 to 40 Lacs 12,000
population

 5. Towns with 10 to 20 Lacs 10,000
population

 6. Towns with 10 Lacs population 8,000
5. Pursuant to the liberalization, the Oil Companies were permitted to appoint large number of new distributors from the year 2000 onwards. The writ petitioner is one such new distributor appointed in or after the year 2000, but all the new distributors were appointed in the saturated market, i.e. where the distributors are already in existence. Considering the economic viability of the new commission distributors, the first respondent evolved a policy vide Circular No.P-20012/65/2000-MKT, dated 17.9.2001 seeking closure of extension counters of the old existing distributors and

fixed the viability at 75% of the aforesaid ceiling limits and sought for transfer of customers in excess of the viable number in favour of the newly commissioned neighbouring distributors vide its proceedings dated 16.10.2001. Both the aforementioned policy decisions of respondent No.1 were to protect the viability of the newly commission distributors only. After liberalization, no specific areas of operation were sought to be contemplated by the first respondent. The decision of the oil marketing companies in appointing new distributors like writ petitioner in the saturated markets and their subsequent decision to close extension counters and transfer of customers from old and existing distributors to the new distributors on one pretext or the other has resulted in absolute chaos in the market and accordingly keeping in view the same the first respondent vide its proceedings dated 29.11.2004 issued fresh policy guidelines stopping transfer of customers from old and existing distributors to the newly commissioned on any pretext and even the oil companies vide their minutes of meeting dated 17.12.2004 decided to stop all transfers under their earlier policies on the basis of viability.

6. Respondents 2 and 5 are bound by the guidelines issued by respondent No.1 from time to time in matters like extending various facilities to the distributors appointed by them and the said guidelines of respondent No.1 are bound to be implemented in their strict sense, but surprisingly the respondents apart from disobeying the said guidelines in their anxiety to do undue favour to the writ petitioner did not even refer to any of those proceedings of the first respondent. The petitioner has no vested or concomitant right to seek transfer of customers from 6th respondent. The order dated 5.8.2003 in W.P.No.13085 of 2002 and W.P.No.25031 of 2002 etc. have no bearing on the facts of the present case. The present refill sale of 6th respondent is at about 4100 per month, i.e., much below the required viable number of 6000 refill sales per month. The respondent Oil companies are fully aware of the said figures. Even the area of operations mentioned in the licence agreements do not confer any exclusive right or monopoly in favour of any distribution, and in any case, the grievance of the writ petitioner that continuance of business by 6th respondent would effect her economic viability is no longer a valid cause of action. Further, the minutes of the meeting dated 17.12.2004 and the recent policy

guidelines of the first respondent has superceded all their earlier policy decisions enabling transfer of customers from the old dealers and hence prays to dismiss the writ petition.

7. A reply affidavit has been filed by the writ petitioner. The 6th respondent is not entitled to supply L.P.G (H.P) cylinders to customers in Inkollu area under RASOI GHAR scheme to the schools under the mid-day meals scheme. The stand taken by the respondents in delaying transfer of customers within the radius of 15 K.Ms of Inkollu is quite arbitrary, illegal and contrary to the guidelines issued by the central Government. Hence, she prays to allow the writ petition.

8. Learned counsel appearing for the petitioner vehemently contended that the 6th respondent is authorized only to distribute L.P.G cylinders in Pedanandipadu area of Guntur district, but he is unauthorizedly distributing L.P.G in Inkollu area. After the petitioner was appointed as L.P.G Distributor with effect from 27.10.2004, the extension counter of the 6th respondent has to be closed. Continuance of supply of L.P.G connections is contrary to the guidelines issued by the first respondent from time to time. Hence he prays to allow the writ petition.

9 . On the other hand, learned counsel appearing for 2nd and 5th respondent contended that the 6th respondent was permitted to operate extension counter at Inkollu prior to the commencement of petitioner's L.P.G distribution at Inkollu. Therefore, new distributor is entitled to enroll the customers in his trading area by transferring the customers from the existing extension counters. It is for the petitioner to obtain necessary orders from the 6th respondent and appropriate decisions will be taken by 2nd and 5th respondent accordingly.

10. Learned counsel appearing for the 6th respondent contended that the petitioner has no exclusive right over any area in exclusion of other distributors. As per the policy of the first respondent, it was decided to stop transfer of customers from old and existing distributors to the newly commissioned oil companies under the earlier

policies. As per the existing policy guidelines of the Union of India, 6th respondent is entitled to supply L.P.G cylinders to Inkollu area also. Even if that is taken into consideration, present refill sale is less than the viability norm prescribed by the Government of India policy guidelines. All the policy guidelines prior to 17.12.2004 have been superceded and hence the present writ petition is devoid of merits and is liable to be dismissed.

11. The writ petitioner was given Indane (L.P.G) Distributorship at Inkollu in the territory or distribution area of Inkollu and covering villages up to 15 Kilometers radius by virtue of an agreement dated 10.11.2004 entered in to between the writ petitioner and second respondent, whereas the 6th respondent is L.P.G distributor of Hindustan Petroleum Corporation Limited at Pedanandipadu. Pedanandipadu and Inkollu are separated by a distance of 27 kilometers.

12. Though the 6th respondent did not specifically state in the counter about his area of operation, but the second respondent under whom he was given a distributorship filed counter stating that the area of operation of the 6th respondent is Pedanandipadu. It is also not in dispute that the 6th respondent was permitted to operate an extension counter at Inkollu prior to the commission of the petitioner's L.P.G Distributorship at Inkollu. As per the guidelines issued by the first respondent dated 17.9.2001, necessary directions were given to all oil companies to ensure that all the extension counters which are operating in the trading areas of newly commissioned LPG distributorships must be closed down immediately. The same policy guideline has been reiterated in the proceedings of the first respondent dated 01.02.2002 reiterating the directions issued in the letter dated 17.9.2001. But, according to the learned counsel for the 6th respondent, as per the policy of the first respondent in its letter dated 29.11.2004, the viability criteria would warrant a minimum customer base. The work relating to the transfer of customers from established to new distributorships has been completed, it may now be brought to a close. All the oil companies met on 17.12.2004 and decided that no transfer of customers shall be undertaken for customers enrolled in common area of operation. It is also decided that transfer of customers being undertaken based on viability norms amongst the distributors having common area of operation shall cease to

operate. As per the Government of India letter dated 29.11.2004 viability criteria would warrant a minimum customer base is the procedure to be followed and no transfer of customers shall be undertaken for customers enrolled in common area of operation. The above proceedings would apply only to the oil companies who have undertaken the distribution of L.P.Gs in a common area of operation. Therefore, these proceedings have no application to the present facts and circumstances of the case in view of the fact that petitioner is appointed for Inkollu area whereas the 6th respondent is appointed as distributor for Pedanandipadu area, which are separated by a distance of 27 kilometers. If the 6th respondent is appointed as a distributor for Inkollu area also by the second respondent, then in such circumstances, no transfer of customers shall be undertaken for customers enrolled from one company to another company because it is always open for the oil company to appoint one or more distributors in a particular area. A distributor appointed by one oil company for one area cannot have any right to resist distributor appointed by another oil company in respect of the same area. Therefore, the circular instructions issued by the first respondent in his proceedings dated 29.11.2004 and the decision taken by all the oil companies in its meeting dated 17.12.2004 have no application to the present facts of the case because the petitioners and 6th respondent were appointed as distributors for two different areas, i.e., Inkollu and Pedanandipadu respectively. They are not common areas of operation. As a matter of fact, the 6th respondent was permitted to operate an extension counter for Inkollu area prior to the commission of the petitioner's LPG Distributorship at Inkollu. As per the circular instructions issued by the first respondent dated 17.9.2001, all the extension counters, which are operating in the trading areas of newly commissioned LPG distributorships must be closed down. The same has been reiterated in the subsequent letter of the first respondent dated 1.2.2002. It has also been reiterated in the letter issued by the first respondent dated 16.10.2001 wherein extension counter of an old distributor is operating in the area of newly commissioned distributorship, may be effected as per the directions of the Ministry issued in letter dated 17.9.2001. These circulars have not been superceded. They continue to be in operation.

13. But in respect of common area of operation, the viability limit for a distributor in a given market need to be fixed at 75% of the present ceiling limit prescribed for the different markets as the benchmark for the viability of a distributorship. So, the

ceiling limits prescribed by the Government of India were applicable only in case where different distributors of different oil companies are operating in a common area. In such circumstances, question of transferring of a customer from one oil company to another oil company does not arise. Even the 6th respondent who is relying upon the first respondent's policy guidelines issued vide Letter dated 16.10.2001 made it clear that the transferring of LPG connections where extension counter of an old distributor is operating in the area of a newly commissioned distributorship may be effected as per the directions of the Ministry issued vide letter dated 17.9.2001. As per the letter dated 17.9.2001, an advice was given to the oil companies to look into the matter personally and ensure that all extension counters which are operating in the trading areas of newly commissioned LPG distributorships must be closed down immediately irrespective of the fact that same have been opened with the concurrence of the Management of concerned OMCs or otherwise. After closing down the extension counters, customers served through these counters be transferred immediately to newly commissioned distributorships of the respective areas. Therefore, 6th respondent cannot be permitted to operate an extension counter at Inkollu after commission of the distributorship of the petitioner. As a matter of fact, the third respondent addressed a letter to the second respondent to advice 6th respondent to stop supply of L.P.G gas in the trading area of Inkollu distributor and transfer the L.P.G customers to the petitioner at Inkollu.

14. Therefore, the writ petition is allowed declaring the action of the 6th respondent in supplying/distributing the H.P (L.P.G) Cylinders to the customers within the radius of 15 Kilometers of Inkollu as illegal with a consequential direction to the 2nd and 5th respondents to take appropriate steps against the 6th respondent in directing him to transfer the L.P.G customers to the petitioner within four weeks from the date of receipt of copy of this order. The relief against the third respondent was given up by the petitioner. Hence the writ petition is dismissed against the third respondent as given up. In the circumstances, no costs.

K.C.BHANU, J

Dated: 11.4.2005

Note: Furnish C.C in two days

(B/o)

RAR

To

1 The Secretary to the Govt., Union of India,

Department of Petroleum and Natural Gas, Central

Secretariat, New Delhi.

2 The Director (Marketing) M/s.Hindustan Petroleum

Corporation 8, Surjee Vallab Marg, Mumbai-400 038.

3 The Director (Marketing) M/s.Indian Oil Corporation,

Head Office, 9, Ali Yawar Jung Marg, Bandra, Mumbai.

4 The Joint Collector, Guntur District at Guntur.

5 The Executive Sales Officer, M/s.H.P.C.Ltd., Guntur.

6 2 CCs to G.P for Revenue, High Court Buildings, Hyd. (OUT)

7 2 CD copies.